IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WA.No. 1058 of 2002(A)

AGAINST THE JUDGEMENT/ORDER IN OP.867/2002 Dated 07/03/2002
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APPELLANT: 4TH RESPONDENT:

THE MANAGER, A.L.P.S. NENMENI POST,
PALAKKAD.

Addl. appellants 2 to 8 impleaded:

2. SABOORA BEEVI, W/O. LATE N.J.NOORMUHAMMED,
NANDAN KIZHAI, ANAMARI (P.O.), KOLLENKODE,
MALAPPURAM DISTRICT.

3. N.N.KAMARUDHEEN, S/O. LATE NOOR MUHAMMED,
NANDAN KIZHAI, ANAMARI (P.O.), KOLLENKODE,
MALAPPURAM DISTRICT.

4. N.N.MUHAMMED KASIM, S/O. LATE N.J.NOOR MUHAMMED,
NANDAN KIZHAI, ANAMARI (P.O.), KOLLENKODE,
MALAPPURAM DISTRICT.

5. N.N.SAHEEDHA, W/O. MUHAMMED BASHEER,
ATHIMANI, VANDITHAVALAM.

6. N.N.SALIM, S/O. LATE N.J NOOR MUHAMMED,
NANDAN KIZHAI, ANAMARI (P.O.), KOLLENKODE,
MALAPPURAM DISTRICT.

7. N.N.MUHAMMED RAFY, S/O. LATE N.J.NOOR MUHAMMED,
NANDAN KIZHAI, ANAMARI (P.O.), KOLLENKODE,
MALAPPURAM DISTRICT.

8. N.N.BADHARNEESA, W/O. ABBAS, KOPANTHAR,
ELAPPULLY P.O., PALAKKAD.

(ADDL.APPELLANTS 2 TO 8 IMPLEADED AS PER ORDER DT.28-6-2007
IN I.A.1419/2005).

BY ADV. SRI.C.A.MAJEED

RESPONDENTS: 1ST RESPONDENT/PETITIONER:
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1. M.J.JOHN, L.P.S.A., A.L.P.S.,
   NENMENI POST, PALAKKAD.

2. THE DEPUTY DIRECTOR OF EDUCATION,
   PALAKKAD.

3. THE ASST.EDUCATIONAL OFFICER,
   KOLLENGODE, PALAKKAD.

4. THE HEADMISTRESS, A.L.P.S., NENMENI,
   PALAKKAD.

R1 BY ADV. SRI.N.SUGATHAN
R2 & 3 BY GOVERNMENT PLEADER SRI BENNY GERVASIS.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-8-2007, ALONG WITH WA NO. 1059 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN, & V.K.MOHANAN, J.

W.A.NOS.1058 & 1059 of 2002

Dated this the 10th day of August 2007

JUDGMENT

Radhakrishnan, J.

Both the appeals are filed by the manager of the school. Appellant in WA 1058/2002 is the 4th respondent in O.P. 867/2002. Appellant in W.A.1059/2002 is the Petitioner in O.P.19044/2000. O.P.No.867/2002 was preferred by the Ist respondent in W.A.1058/2002 for a writ of mandamus or any other appropriate writ, order or direction directing the respondents to allow the Petitioner to function as LPSA in the school and also for a direction to the 3rd respondent to comply with Ext.P10 direction issued by the 2nd respondent and to draw and disburse the salary for the month of July, 2001 onwards, and also for a declaration that Ext.P7 memo issued by the 4rth respondent is illegal and unsustainable.

2. WA No. 1059/2002 arises out of the judgment in O.P.No.19044/2000 which was filed for the issuance of a writ of certiorari or any other appropriate writ or direction to quash Ext.P4 and Ext.P7A and Ext.P7B issued by the 2nd respondent herein ; and to issue a writ of mandamus directing the 2nd respondent to proceed with Rule 75 of Chapter XIV-A KER to make a formal enquiry report to the petitioner with regard to the charges laid down in Ext.P1 series and to issue a writ of mandamus

or order or direction to the Ist respondent to dispose of Ext.P3 revision petition within a time bound period after hearing the Petitioner.

3. **O.P.No.** 867/2002 was disposed of by a Single Judge allowing the Petitioner to function as LPSA in ALP School, Nenmeni. Respondents 1 and 2 were directed to pay salary to the Petitioner for the period he was kept out of service on the basis of Ext.P7 order of the manager and also the Ist respondent to recover the amount due from the Manager. O.P.No.19044/2000 was disposed of on 7-3-2002 by holding that there is no illegality in the direction to reinstate the 3rd respondent . In spite of the direction of the learned Single Judge directing reinstatement, the teacher was not reinstated. Rule 67(8) of Chapter XIV A KER provides payment of salary for the period a teacher was kept out of service. The teacher was kept out of service due to the mala fide action of the manager and the salary has to be recovered from the manager. Learned Single Judge has permitted the Government to recover the amount from the manager. We find no infirmity in that direction. It is stated that the manager is no more, and the legal representatives have

been impleaded. It is open to the government to recover the amount in accordance with law. The Writ appeals are dismissed.

K.S.Radhakrishnan, Judge.

V.K.Mohanan, Judge.

Kvm/

K.S.RADHAKRISHNAN &

V.K.MOHANAN, J J.

W.A.Nos 1058 & 1059 of 2002

Judgment

Dated:10-8-2007.